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SUPERIOR COURT OF THE STATE CALIFORNIA

COUNTY OF CONTRA COSTA

ANGELO KALAVERAS,

Plaintiffs,

vs.

**NCR CORPORATION; and DOES 1-100,
inclusive,**

Defendants.

Case No.: 20-cv-06930-YGR

**SECOND AMENDED INDIVIDUAL AND
REPRESENTATIVE ACTION COMPLAINT**

- 1. FAILURE TO PROPERLY CALCULATE
AND PAY OVERTIME**
- 2. FAILURE TO PROVIDE MEAL BREAKS**
- 3. FAILURE TO PROVIDE REST BREAKS**
- 4. FAILURE TO FURNISH ACCURATE
ITEMIZED WAGE STATEMENTS**
- 5. FAILURE TO PROPERLY CALCULATE
AND PAY SICK LEAVE**
- 6. FAILURE TO PAY ALL WAGES AT
CESSATION OF EMPLOYMENT**
- 7. UNLAWFUL BUSINESS PRACTICES**
- 8. VIOLATION OF PRIVATE ATTORNEYS
GENERAL ACT**

Plaintiff Angelo Kalaveras brings this individual and representative action against NCR and Does 1 through 100, for violations of the California Labor Code and the Business and Professions Code.

PARTIES

1. Angelo Kalaveras ("Plaintiff") is and at all times relevant herein was employed in Contra Costa County, California, and was an "employee" as defined by the Fair Labor Standards Act

1 (“FLSA”), the California Labor Code (“Labor Code”), and the applicable California Industrial Wage
2 Commission (“IWC”) Order(s).

3 2. NCR Corporation (“Defendant” or “NCR”) is a Maryland company which does
4 business in California and throughout the United States.

5 3. At all times relevant herein, NCR has been an “employer” as defined by the Fair Labor
6 Standards Act (“FLSA”), the California Labor Code (“Labor Code”), and the applicable California
7 Industrial Wage Commission (“IWC”) Order(s).

8 4. NCR and Does 1-100 are collectively referred to as Defendants.

9 5. Plaintiff is not aware of the true names and capacities of the Defendants sued herein as
10 Does 1 through 100, whether individual, corporate, associate, or otherwise and therefore sues such
11 Defendants by these fictitious names. Plaintiff will amend this Complaint to allege their true names
12 and capacities when ascertained. Plaintiff is informed and believes, and on that basis alleges, that
13 each of the fictitiously named Defendants is responsible in some manner for the occurrences herein
14 alleged and that Plaintiff’s injuries and damages herein alleged were legally caused by such
15 Defendants. Unless otherwise indicated, each Defendant was acting within the course and scope of
16 said agency and/or employment, with the knowledge and/or consent of said co-Defendant.

17 6. Plaintiff is informed and believes and thereupon alleges that at all times mentioned
18 herein, each of the Defendants, including each Doe Defendant, was acting as the agent, servant,
19 employee, partner and/or joint venturer of and was acting in concert with each of the remaining
20 Defendants, including each Doe Defendant, in doing the things herein alleged, while at all times acting
21 within the course and scope of such agency, service, employment partnership, joint venture and/or
22 concert of action. Each Defendant, in doing the acts alleged herein, was acting both individually and
23 within the course and scope of such agency and/or employment, with the knowledge and/or consent of
24 the remaining Defendants.

25 **JURISDICTION AND VENUE**

26 7. This Court is the proper Court, and this action is properly filed in the Superior Court of
27 California for the County of Contra Costa because NCR conducts business in this County and Plaintiff
28 has performed work for NCR in this County. Plaintiff hereby demands a jury trial.

GENERAL ALLEGATIONS

8. Plaintiff worked NCR as a Customer Engineer from October 2019 until January 2020.

9. Throughout his employment, Plaintiff was a non-exempt employee. As such, he was eligible for and at times worked overtime.

10. Plaintiff and NCR's other non-exempt California employees were eligible for and at times received non-discretionary bonuses, commissions, and other items of compensation.

11. These non-discretionary bonuses, commissions, and other items of compensation included, but were not limited to, shift premiums, "CE Vehicle" pay, and "Biometric Credit" pay.

Exhibit 1.¹

12. Throughout his employment, however, NCR failed to properly calculate and pay the overtime wages owed to Plaintiff and its other non-exempt California employees.

13. Specifically, pursuant to its uniform policy, practice and procedure, NCR either (a) failed to include commissions, non-discretionary bonuses and other items of compensation when determining Plaintiff and its other non-exempt employees' "regular rate of pay" for purposes of overtime, or (b) failed to properly calculate and pay the overtime wages owed to Plaintiff and its other non-exempt California employees because it failed to properly account for all commissions, non-discretionary bonuses and other items of compensation earned when determining its employees' "regular rate of pay" for purposes of overtime.

14. For example, during the pay period of December 28, 2019 through January 10, 2020, Plaintiff received "Shift 3 Premium" of \$149.00 and "OT Premium" of \$1.99. See **Exhibit 1**. Pursuant to its uniform policy and practice, NCR failed to properly calculate Plaintiff's "OT Premium" when calculating his regular rate of pay and, therefore, underpaid him. *Id.*

15. Further, during the pay period of December 28, 2019 through January 10, 2020, NCR failed to include Plaintiff's "CE Vehicle" pay of \$27.69 and "Biometric Credit" of \$75.00 when calculating his regular rate of pay and, therefore, underpaid him. See *Id.*

¹ Exhibits 1-4 are incorporated by this reference as though fully set forth herein. Some Exhibits have been reduced and/or redacted due to their size and content.

1 16. Similarly, during the pay period of November 30, 2019 through December 13, 2019,
2 Plaintiff received “Shift 3 Premium” of \$108.00 and “OT Premium” of \$1.89. See **Exhibit 2**.
3 Pursuant to its uniform policy and practice, NCR failed to properly calculate Plaintiff’s “OT Premium”
4 when calculating his regular rate of pay and, therefore, underpaid him. *Id.*

5 17. Further, during the pay period of November 30, 2019 through December 13, 2019,
6 NCR failed to include Plaintiff’s “CE Vehicle” pay of \$27.69 and “Biometric Credit” of \$75.00 when
7 calculating his regular rate of pay and, therefore, underpaid him. See *Id.*

8 18. Additionally, during the pay period of October 19, 2019 through November 1, 2019,
9 NCR failed to include Plaintiff’s “CE Vehicle” pay of \$27.69 and “Biometric Credit” of \$75.00 when
10 calculating his regular rate of pay and, therefore, underpaid him. See *Id.*

11 19. Further, during the pay period of October 19, 2019 through November 1, 2019, Plaintiff
12 received “Shift 3 Premium” of \$48.00 and “OT Premium” of \$0.96. See **Exhibit 3**. Pursuant to its
13 uniform policy and practice, NCR failed to properly calculate Plaintiff’s “OT Premium” when
14 calculating his regular rate of pay and, therefore, underpaid him. *Id.*

15 20. Further, during the pay period of October 19, 2019 through November 1, 2019, NCR
16 failed to include Plaintiff’s “CE Vehicle” pay of \$27.69 when calculating his regular rate of pay and,
17 therefore, underpaid him. See *Id.*

18 21. Plaintiff and NCR’s other non-exempt California employees were entitled to meal and
19 rest breaks in accordance with California law.

20 22. Plaintiff and NCR’s other hourly, non-exempt California employees were not
21 consistently authorized or permitted to take meal breaks as required by California law.

22 23. NCR also required Plaintiff and its other non-exempt California employees to work
23 through meal breaks due to understaffing and work demands.

24 24. On the occasions that Plaintiff and NCR’s other non-exempt California employees were
25 able to take their meal breaks, they routinely occurred after 5 hours of work.

26 25. Further, NCR frequently failed to relieve Plaintiff and its other non-exempt California
27 employees of employer control during their meal breaks.

1 26. Plaintiff and NCR's other hourly, non-exempt California employees were also not
2 consistently authorized or permitted to take rest breaks as required by California law.

3 27. NCR also required Plaintiff and its other non-exempt California employees to work
4 through rest breaks due to understaffing and work demands.

5 28. Further, NCR frequently failed to relieve Plaintiff and its other non-exempt California
6 employees of employer control during their rest breaks.

7 29. When Plaintiff and NCR's other non-exempt California employees were not provided
8 compliant meal and rest breaks, NCR did not always pay premiums as required by California law.

9 30. Plaintiff and NCR's other hourly, non-exempt California employees were also entitled
10 to sick pay pursuant to Labor Code section 245, et seq. Any sick pay used appeared on their wage
11 statements as "Sick Time". See **Exhibit 4**.

12 31. Although Labor Code section 248.5, subdivision (l)(1) mandates that paid sick leave for
13 non-exempt employees be "calculated in the same manner as the regular rate of pay for the workweek
14 in which the employee uses paid sick time", NCR failed to include commissions, non-discretionary
15 bonuses and other items of compensation when determining Plaintiff and NCR's other hourly, non-
16 exempt California employees' regular rate of pay for purposes of sick pay. *Id.* Instead, sick pay was
17 only paid at Plaintiff and NCR's other hourly, non-exempt California employees' base hourly rate.

18 32. When Plaintiff's employment ended, his final paychecks did not include the balance of
19 unpaid overtime, sick pay, or premiums owed to him.

20 33. Because Plaintiff and NCR's other former hourly, non-exempt California employees
21 were not properly paid their overtime and sick wages, provided compliant meal and rest breaks, or paid
22 the premiums associated with missing the same, they were not timely paid all wages due and owing to
23 them during each pay period and at the end of their employment.

24 34. Because of the violations set forth above, and as evidenced in the samples of Plaintiff's
25 wage statements attached hereto as **Exhibits 1-3**, the wage statements furnished by NCR to its non-
26 exempt California employees violated California Labor Code section 226(a) insofar as they failed to
27 accurately show:

- 28 a. The gross wages earned, in violation of section 226(a)(1);
 b. The total hours worked by the employee in violation of section 226(a)(2);

- c. The net wages earned, in violation of section 226(a)(5); and
- d. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of section 226(a)(9).

35. Separately, and independent of the violations set forth above, the wage statements NCR furnishes to its non-exempt California employees violate California Labor Code section 226(a) insofar as they fail to accurately show the total hours worked in violation of section 226(a)(2).

36. Specifically, the wage statements NCR furnishes to its non-exempt California employees list multiple different categories of earnings such as (i) “Regular Pay,” (ii) “Overtime,” (3) “OT Premium,” (4) “Shift 3 Premium”, (5) “Training Hours”, (6) “Holiday”, and (7) “MEAL PENALTY”. See **Exhibits 1-3**.

37. With respect to the hours included in the pay period, the wage statements do not provide a separate category calculating the total hours worked by Plaintiff or NCR’s other non-exempt California employees. See **Exhibits 1-3**. Rather, the statements appear to list the number of hours worked at the “Regular Pay” rate, “Overtime” rate, “OT Premium” rate, “Shift 3 Premium” rate, “Training Hours” rate, “Holiday” rate, and “MEAL PENALTY” rate. *Id.* Inclusion of multiple categories of “hours worked” render the wage statements inaccurate and confusing and have impeded the ability of Plaintiff and NCR’s other non-exempt California employees to promptly and easily determine the total hours worked during the pay period in order to ensure NCR was properly compensating them.

38. For example, during the pay period of December 28, 2019 through January 10, 2020, Plaintiff’s wage statement suggests that he worked a total of 60 hours at “Regular Pay”, 12 hours at “Training Hours”, 8 hours at “Holiday”, 74.50 hours at “Shift 3 Premium”, 2.50 hours at “Overtime”, and 1 hour at “Meal Break Penalty”. There is no separate category identifying “total hours worked.” See **Exhibit 1**.

39. If an employee sought to calculate the total number of hours worked during a pay period and added the hours listed under the “Regular Pay”, “Training Hours”, “Holiday”, “Shift 3 Premium”, “Overtime”, and “Meal Break Penalty” categories, the total hours worked would be incorrect. *Id.*; see *McKenzie v. Federal Exp. Corp.*, 275 F.R.D. 290, 292 (C.D. Cal. 2011).

1 40. There is no way to determine from the face of the wage statements the total number of
2 hours actually worked. Simply adding all of the numbers under the “Hours” column, for the December
3 28, 2019 through January 10, 2020 pay period for example (60 + 12 + 8 + 74.50 + 2.5 + 1), results in
4 158.00 hours. Plaintiff did not work 158.00 hours during the pay period of December 28, 2019 through
5 January 10, 2020.

6 41. Similarly, during the pay period of November 30, 2019 through December 13, 2019,
7 Plaintiff’s wage statement suggests that he worked a total of 32 hours at “Regular Pay”, 48 hours at
8 “Training Hours”, 54 hours at “Shift 3 Premium”, and 2.50 hours at “Overtime. There is no separate
9 category identifying “total hours worked.” See **Exhibit 2**.

10 42. If an employee sought to calculate the total number of hours worked during a pay
11 period and added the hours listed under the “Regular Pay”, “Training Hours”, “Holiday, “Shift 3
12 Premium”, “Overtime”, and “Meal Break Penalty” categories, the total hours worked would be
13 incorrect. *Id.*; see *McKenzie v. Federal Exp. Corp.*, 275 F.R.D. 290, 292 (C.D. Cal. 2011).

14 43. Separately, and independent of the violations set forth above, the wage statements
15 NCR furnishes to its non-exempt California employees violate California Labor Code section 226(a)
16 insofar as they fail to accurately show applicable hourly rates in effect during the pay period and the
17 corresponding number of hours worked at each hourly rate in violation of section 226(a)(9).

18 44. For example, during the pay period of December 28, 2019 through January 10, 2020,
19 Plaintiff received “Shift 3 Premium” of \$149.00 and “OT Premium” of \$1.99. See **Exhibit 1**. The
20 wage statements do not list the “OT Premium” rate or the number of hours for which it is being paid.

21 45. NCR was, at all times relevant herein, aware of the requirements of California Labor
22 Code section 226.

23 46. NCR has, at all times relevant herein, furnished wage statements to each of its non-
24 exempt California employees pursuant to an established set of policies, procedures and practices.

25 47. From at least four years prior to the filing of this action, NCR has adopted and
26 employed unfair business practices. These unfair business practices include, but are not limited to,
27 failing to properly calculate and pay all overtime wages due, and failing to provide compliant meal and
28 rest breaks, or to pay the premiums associated therewith.

PRIVATE ATTORNEYS GENERAL ACT ALLEGATIONS

48. The Private Attorney General Act (“PAGA”), as set forth at California Labor Code § 2698 et seq., is and at all times relevant herein was applicable to Rodriguez’s employment by Defendants.

49. Pursuant to Labor Code § 2699(a) any provision of the Labor Code which provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (“LWDA”) for violations of the Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures outlined in Labor Code § 2699.3. California Labor Code § 2699(a).

50. Pursuant to PAGA, an “aggrieved employee” is “any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.” Labor Code § 2699(c).

51. Plaintiff was employed by NCR and the alleged violations were committed against him during his time of employment. Plaintiff is therefore an aggrieved employee as defined by Labor Code § 2699(c). Other current and former employees are also aggrieved employees in that one or more of the alleged violations were also committed against them during their time of employment with NCR.

52. As is outlined herein, NCR violated the Labor Code as to Rodriguez and other current and former employees it employed and/or employs within California. Specifically, Defendants violated Labor Code sections 201, 202, 203, 204, 226, 226.7, 233, 246, 510, 512, and 1198, as well as the applicable IWC Wage Orders.

53. Pursuant to Labor Code § 2699(f), the civil penalty recoverable in a PAGA action is that which is provided for by the by the Labor Code. When the Labor Code does not provide a civil penalty, the penalty recoverable shall be \$100 for the initial violation per employee per pay period and \$200 for each subsequent violation per employee per pay period.

54. Pursuant to Pursuant to California Labor Code § 2699(g), an aggrieved employee may recover the civil penalty on behalf of himself or herself and other current or former employees against

1 whom one or more of the alleged violations was committed. Furthermore, any employee who prevails
2 in any action shall be entitled to an award of reasonable attorney's fees and costs.

3 55. Pursuant to Labor Code § 2699.3, an aggrieved employee, including Rodriguez, may
4 pursue a civil action arising under PAGA after the following requirements have been met:

5 a. The aggrieved employee shall give written notice by certified mail to the
6 LWDA and the employer (hereinafter "Employee's Notice") of the specific provisions of
7 California Labor Code alleged to have been violated, including the facts and theories to support
8 the alleged violations;

9 b. The LWDA shall provide notice (hereinafter "LWDA's Notice") to the
10 employer and the aggrieved employee by certified mail that it does not intend to investigate the
11 alleged violation within 60 days of the postmark date of the Employee's Notice. Upon receipt
12 of the LWDA's Notice, or if the LWDA does not provide notice with 65 calendar days of the
13 postmark date of the Employee's Notice, the aggrieved employee may commence a civil action
14 pursuant to California Labor Code § 2699 to recover civil penalties in addition to any other
15 penalties to which the employee may be entitled.

16 c. For all alleged violations not enumerated in Labor Code § 2699.5, the employer
17 is given thirty-three (33) days to cure and notify the aggrieved employee by certified mail that
18 the violation has been cured. If the violation is not cured, the aggrieved employee may
19 commence a civil action pursuant to California Labor Code § 2699 to recover civil penalties in
20 addition to any other penalties to which the employee may be entitled.

21 56. On June 25, 2020, Plaintiff provided written notice by certified mail to NCR and by
22 online filing to the LWDA of the specific provisions of the Labor Code alleged to have been violated,
23 including the facts and theories to support the alleged violations.

24 57. . As of the filing of this Second Amended Individual and Representative Action
25 Complaint, which is more 65 days after June 25, 2020, the LWDA has not
26 responded to Plaintiff's notification or otherwise indicated an intention to
27 investigate his claims. Plaintiff has satisfied the administrative prerequisites
28 under Labor Code § 2699.3 to bring a civil action to recover penalties against

1 NCR, in addition to other remedies, for violations of California Labor Code
 2 sections 201, 202, 203, 204, 226, 226.7, 233, 246, 510, 512, and 1198, as well
 3 as the applicable IWC Wage Orders.

4 58. As of the filing of the First Amended Class, Collective, and Representative
 5 Action Complaint, which was more than thirty-three (33) days after June 25,
 6 2020, NCR has not furnished any notification reflecting that any of the
 7 violations alleged in the June 25, 2020 notification letter have been cured
 8 pursuant to California Labor Code section 2699.3, subdivision (c)..

9 **FIRST CAUSE OF ACTION**
 10 **VIOLATION OF FAIR LABOR STANDARDS ACT AND**
 11 **CALIFORNIA LABOR CODE §§ 510 & 1198**
(Failure to Pay Overtime)

Against Defendants on Behalf of Plaintiff

12 59. Plaintiff hereby realleges and incorporates by reference each and every allegation set
 13 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
 14 allegations of this cause of action.

15 60. Pursuant to California Labor Code section 510, any work in excess of eight hours in
 16 one workday and any work in excess of 40 hours in any one workweek and the first eight hours
 17 worked on the seventh day of work in any one workweek shall be compensated at the rate of no less
 18 than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours
 19 in one day shall be compensated at the rate of no less than twice the regular rate of pay for an
 20 employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be
 21 compensated at the rate of no less than twice the regular rate of pay of an employee.

22 61. The “regular rate of pay” includes all remuneration for employment paid to the
 23 employee and includes, but is not limited to, hourly earnings, salary, piece work earnings,
 24 commissions, non-discretionary bonuses, and the value of meals and lodging. See 29 U.S.C. § 207(e);
 25 DLSE Enforcement Policies and Interpretations Manual Section 49.

26 62. Pursuant to California Labor Code section 1198, the maximum hours of work and
 27 standard conditions of labor fixed by the commission shall be the maximum hours of work and the
 28

1 standard conditions of labor for employees and the employment of any employee for longer hours than
2 those fixed by the commission or under conditions of labor prohibited by the order is unlawful.

3 63. During the relevant time period, Plaintiff regularly worked overtime.

4 64. During the relevant time period, Defendants failed to include commissions, non-
5 discretionary bonuses and/or other items of compensation, when determining the “regular rate of pay”
6 for Plaintiff.

7 65. During the relevant time period, Defendants failed to properly calculate the “regular
8 rate of pay” for Plaintiff.

9 66. During the relevant time period, Defendant intentionally and willfully failed to pay all
10 overtime wages due to Plaintiff.

11 67. Wherefore, Plaintiff has been injured as set forth above and request relief as hereafter
12 provided.

13 **SECOND CAUSE OF ACTION**
14 **VIOLATION OF LABOR CODE §§ 226.7, 512**
15 **(Failure to Furnish Meal Breaks)**
Against Defendants on Behalf of Plaintiff

16 68. Plaintiff hereby realleges and incorporates by reference each and every allegation
17 set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
18 allegations of this cause of action.

19 69. Labor Code § 226.7 requires employers to provide employees meal periods as
20 mandated by Order of the Industrial Welfare Commission.

21 70. Labor Code § 512(a) and the applicable IWC Wage Order(s) provide that an
22 employer may not employ a person for a work period of more than 5 hours per day without
23 providing that employee a meal period of not less than 30 minutes, except that if the total work
24 period per day is no more than six hours, the meal period may be waived by mutual consent of both
25 the employer and employee.

26 71. The applicable Wage Order(s) and Labor Code section 226.7 further require an
27 employer who fails to provide a meal period to pay the employee one hour of pay at the
28 employee’s “regular rate of compensation” for each day that a meal period is missed.

FOURTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 226(a)
(Failure to Furnish Accurate Itemized Wage Statements)
Against Defendants on Behalf of Plaintiff

82. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

83. Pursuant to California Labor Code section 226(a) “every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when the wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee [. . .], (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number, (8) the name and address of the legal entity that is the employer [. . .], (9) all applicable hourly rates in effect during the pay period and corresponding number of hours worked at each hourly rate by the employee and, if the employer is a temporary services employer [. . .], the rate of pay and the total hours worked for each temporary services assignment.”

84. An employee suffering injury as a result of the knowing and intentional failure by an employer to comply with Labor Code section 226(a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed the aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees. Labor Code § 226(e)(1).

85. An employee is deemed to suffer injury if the employer fails to provide a wage statement or if the employer fails to provide accurate and complete information as required by any one or more of the items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone, i) the amount of gross/net wages paid to the employee

1 during the pay period or any of the other information required to be provided pursuant to Labor Code
 2 section 226(a) items (2) to (4), inclusive, (6) and (9), ii) deductions made by the employer, iii) the
 3 name and address of the employer and iv) the name of the employee and the last four digits of his or
 4 her social security number or employee identification number. Labor Code § 226(e)(2)(A) and (B)(i)-
 5 (iv). “Promptly and easily determine” means a reasonable person would be able to readily ascertain
 6 the information without reference to other documents or information. Labor Code § 226(e)(2)(C).

7 86. As set forth above, Defendants intentionally and willfully failed to furnish accurate
 8 itemized wage statements which complied with Labor Code section 226.

9 87. Wherefore, Plaintiff has been injured as set forth above and request relief as hereafter
 10 provided.

11 **FIFTH CAUSE OF ACTION**
 12 **VIOLATION OF LABOR CODE §§ 218, 233, 246 *et seq.***
 13 **(FAILURE TO PROPERLY CALCULATE AND PAY SICK LEAVE)**
 14 **By Plaintiff Against Defendants**
 15 **Against Defendants on Behalf of Plaintiff**

16 88. Plaintiff hereby realleges and incorporates by reference each and every paragraph set
 17 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
 18 allegations of this cause of action.

19 89. Labor Code section 246(l) requires that employers pay sick time pay to non-exempt
 20 employees at that employee’s “regular rate of pay.”

21 90. The “regular rate of pay” includes all remuneration for employment paid to the
 22 employee and includes, but is not limited to, hourly earnings, salary, piece work earnings, shift
 23 differentials, commissions, non-discretionary bonuses, and the value of meals and lodging. (See 29
 24 U.S.C. § 207(e); DLSE Enforcement Policies and Interpretations Manual Section 49.)

25 91. During the relevant time period, Defendants failed to include commissions,
 26 incentive payments, non-discretionary bonuses, and/or other items of compensation when
 27 determining the “regular rate of pay” for Plaintiff for purposes of sick time pay.

28 92. According to the California Supreme Court, sick pay is a form of wages. (*Murphy*
v. Kenneth Cole Productions (2007) 40 Cal.4th 1094, 1103.)

1 93. Labor Code section 233 provides that “any employer who provides sick leave for
2 employees shall permit an employee to use in any calendar year the employee's accrued and
3 available sick leave entitlement, in an amount not less than the sick leave that would be accrued
4 during six months at the employee's then current rate of entitlement, for the reasons specified in
5 subdivision (a) of Section 246.5.”

6 94. During the relevant time period, Defendants intentionally and willfully failed to
7 pay Plaintiff his sick pay at the rate of pay required by law. Accordingly, Plaintiff did not receive
8 the full amount of paid sick time that he was entitled to receive by law, and were therefore denied
9 the right to use sick leave within the meaning of Labor Code sections 233(a) and (c).

10 95. Any employer who violates Labor Code section 233 is liable to employees for the
11 greater of one days' pay or actual damages, reasonable equitable relief, and reasonable attorneys'
12 fees and costs. (Lab. Code, § 233, subs. (d), (e).)

13 96. Further, Labor Code section 218 authorizes a private right of action to recover unpaid
14 wages.

15 97. Wherefore, Plaintiff has been injured as set forth above and request relief as hereafter
16 provided.

17 **SIXTH CAUSE OF ACTION**
18 **VIOLATION OF LABOR CODE §§ 201, *et seq.***
19 **(Failure to Pay All Wages at Cessation of Employment)**
 Against Defendants on Behalf of Plaintiff

20 98. Plaintiff hereby realleges and incorporates by reference each and every paragraph set
21 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
22 allegations of this cause of action.

23 99. California Labor Code section 201 provides that if an employer discharges an
24 employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

25 100. California Labor Code section 202 requires an employer to pay an employee all earned
26 wages within 72 hours of the employee quitting his or her employment, or immediately at the time of
27 quitting if the employee has given 72 hours previous notice of his or her intention to quit.
28

1 101. As set forth above, Plaintiff was not timely paid all of his earned but unpaid wages
2 when his employment with Defendants ended.

3 102. Wherefore, Plaintiff has been injured as set forth above and request relief as hereafter
4 provided.

5
6 **SEVENTH CAUSE OF ACTION**
7 **VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE §§ 17200 *ET SEQ.***
8 **(Unfair Business Practices)**
9 **Against Defendants on Behalf of Plaintiff**

10 103. Plaintiff hereby realleges and incorporates by reference each and every allegation set
11 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
12 allegations of this cause of action.

13 104. The statutory violations, as alleged above, are unfair business practices within the
14 meaning of the Unfair Competition Law (Business and Professions Code sections 17200 *et seq*), and
15 include, but are not limited to failing to properly calculate the “regular rate of pay” for its non-exempt
16 employees, and to pay overtime accordingly and failing to provide complaint meal and rest breaks or
17 to pay the premiums associated with the same..

18 105. Wherefore, Plaintiff has been damaged as set forth above and request relief as hereafter
19 provided.

20 **EIGHTH CAUSE OF ACTION**
21 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT**
22 **(“PAGA”)**
23 **Against Defendants**

24 106. Plaintiff hereby realleges and incorporates by reference each and every allegation set
25 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
26 allegations of this cause of action.

27 107. Plaintiff is an “aggrieved employee” under the PAGA as he was employed by NCR
28 during the applicable statutory period, from June 25, 2019 through the present, and suffered one or
more of the Labor Code violations outlined herein. Other current and former employees are also
aggrieved employees in that one or more of the alleged violations were also committed against them
during their time of employment with NCR.

108. Plaintiff seeks to recover, on behalf of and as a proxy for the Labor and Workforce Development Agency (the "LWDA"), the civil penalties provided by the PAGA through a representative action permitted by the PAGA and *Arias v. Sup. Ct.* (2009) 46 Cal.4th 969. Class certification of the PAGA claims is not required.

109. Plaintiff seeks to enforce the California Labor Code and related regulations and Industrial Wage Order(s) on behalf of the LWDA and pursuant to the PAGA for a number of violations which include, but are not limited to, all of the following: Labor Code sections 201, 202, 203, 204, 226, 226.7, 233, 246, 510, 512, and 1198, as well as the applicable IWC Wage Orders

110. Pursuant to Labor Code section 2699(f), the civil penalty recoverable in a PAGA action is that which is provided for by the Labor Code or, where no civil penalty is specifically provided, one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

111. Pursuant to California Labor Code section 2699(g), an aggrieved employee may recover the civil penalty on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed. Furthermore, any employee who prevails in any such action shall be entitled to an award of reasonable attorney's fees and costs

112. As a result of the myriad violations of the Labor Code and applicable IWC Order(s) set forth above, Plaintiff seeks recovery of civil penalties, attorneys' fees and costs pursuant to the PAGA as set forth below

113. Wherefore, Plaintiff and the other Aggrieved employees have been damaged as set forth above and request relief as hereafter provided.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment against Defendants as follows:

As to the First through Seventh Causes of Action:

1. That this Court award actual, compensatory, special, and general damages as well as restitutionary relief to Plaintiff;
2. That this Court award injunctive relief, including that available under Business and Professions Code § 17203;

3. That this Court award penalties and liquidated damages including, but not limited to, those available Labor Code §§ 203, 226, 226.7, and 512;
4. That this Court award statutory attorneys' fees and costs, including those available under 29 U.S.C. § 216(b), Labor Code §§ 218.5, 226(e)(1), 226(h), and 1194, as well as Code of Civil Procedure § 1021.5;
5. That this Court award prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law; and
6. That this Court award such other and further relief as the court deems just and proper.

As to the Eighth Cause of Action:

1. For civil penalties, including but not limited to those available under Labor Code §§ 210, 226.3, 256, 558 and 2699(f);
2. For statutory attorneys' fees and costs, including but not limited to those available under Labor Code § 2699(g);
3. For prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law, including those available under Civil Code §§ 3287(a) and 3289(b), and Labor Code § 218.6; and
4. For such other and further relief as the court deems just and proper.

DATED: March 12, 2021

MAYALL HURLEY P.C.

By Robert Wasserman
ROBERT J. WASSERMAN
JENNY D. BAYSINGER
Attorneys for Plaintiff

EXHIBIT 1

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Company Information 1 item

Name	Address	Phone
NCR Corporation	864 Spring St NW Atlanta, GA 30308 United States of America	+1 (800) 225-5627

Payslip Information 1 item

Name	Employee ID	Pay Period Begin	Pay Period End	Check Date	Check Number
Angelo Kalaveras	14200149850	12/28/2019	01/10/2020	01/17/2020	

Current and YTD Totals 2 items

Balance Period	Gross Pay	Pre Tax Deductions	Employee Taxes	Post Tax Deductions	Net Pay
Current	2,429.49	143.32	616.60	0.00	1,669.57
YTD	4,688.49	286.64	1,165.95	0.00	3,235.90

Earnings 10 items

Description	Dates	Hours	Rate	Amount
Overtime	12/28/2019 - 01/03/2020	2.50	39.00	97.50
Regular Pay	12/28/2019 - 01/10/2020	60.00	26.00	1,560.00
Shift 3 Premium	12/28/2019 - 01/10/2020	74.50	2.00	149.00
Training Hours	12/28/2019 - 01/10/2020	12.00	26.00	312.00
CE Vehicle	12/28/2019 - 01/10/2020	0.00	0.00	27.69
Holiday	12/28/2019 - 01/03/2020	8.00	26.00	208.00
OT Premium	12/28/2019 - 01/03/2020	0.00	0.00	1.99
Biometric Credit	12/28/2019 - 01/10/2020	0.00	0.00	75.00
Group Term Life	12/28/2019 - 01/10/2020	0.00	0.00	3.90
Meal Break Penalty	12/28/2019 - 01/03/2020	1.00	26.00	26.00
		Total:		2,461.08

Employee Taxes 5 items

Description	Amount	YTD
OASDI	143.70	276.83
Medicare	33.60	64.74
Federal Withholding	315.83	594.15
State Tax - CA	100.61	186.21
CA SDI - CASDI	22.86	44.02
Total:	616.60	1,165.95

Pre Tax Deductions 3 items

Description	Amount	YTD
Dental Plan	9.16	18.32
Eye Plan	4.75	9.50
Medical	129.41	258.82
Total:	143.32	286.64

Taxable Wages 3 items

Description	Amount	YTD
OASDI - Taxable Wages	2,317.76	4,465.03
Medicare - Taxable Wages	2,317.76	4,465.03
Federal Withholding - Taxable Wages	2,317.76	4,465.03

Withholding 3 items

Description	Federal	Work State
Marital Status	Married but withhold at higher Single rate	Married but withhold at higher Single rate
Allowances	0	0
Additional Withholding	0	

Payment Information 1 item

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EXHIBIT 2

Angelo Kalaveras: 12/13/2019 (Regular) - Complete (Actions)[Previous Payslip](#)[Next Payslip](#)[Return to My Payslips](#)[Print Payslip Image](#)[Print Multiple Payslips](#)

Company Information 1 item

Name	Address	Phone
NCR Corporation	864 Spring St NW Atlanta, GA 30308 United States of America	+1 (800) 225-5627

Payslip Information 1 item

Name	Employee ID	Pay Period Begin	Pay Period End	Check Date	Check Number
Angelo Kalaveras	14200149850	11/30/2019	12/13/2019	12/20/2019	

Current and YTD Totals 2 items

Balance Period	Gross Pay	Pre Tax Deductions	Employee Taxes	Post Tax Deductions	Net Pay
Current	2,362.39	140.93	596.83	0.00	1,624.63
YTD	10,116.68	422.79	2,501.60	0.00	7,192.29

Earnings 9 items

Description	Dates	Hours	Rate	Amount	
Overtime	12/07/2019 - 12/13/2019	2.50	39.00	97.50	24
Regular Pay	11/30/2019 - 12/13/2019	32.00	26.00	832.00	1,04
Shift 3 Premium	11/30/2019 - 12/13/2019	54.00	2.00	108.00	28
Training Hours	11/30/2019 - 12/13/2019	48.00	26.00	1,248.00	8,11
CE Vehicle	11/30/2019 - 12/13/2019	0.00	0.00	27.69	11
Holiday					20
OT Premium	12/07/2019 - 12/13/2019	0.00	0.00	1.89	
Biometric Credit	11/30/2019 - 12/13/2019	0.00	0.00	75.00	22
Group Term Life	11/30/2019 - 12/13/2019	0.00	0.00	3.90	1
Total:				2,393.98	10,23

Employee Taxes 5 items

Description	Amount	YTD
OASDI	139.69	608.61
Medicare	32.67	142.34
Federal Withholding	304.23	1,264.83
State Tax - CA	98.02	388.88
CA SDI - CASDI	22.22	96.94
Total:	596.83	2,501.60

Pre Tax Deductions 3 items

Description	Amount	YTD
Dental Plan	8.81	26.43
Eye Plan	4.80	14.40
Medical	127.32	381.96
Total:	140.93	422.79

Taxable Wages 3 items

Description	Amount	YTD
OASDI - Taxable Wages	2,253.05	9,816.35
Medicare - Taxable Wages	2,253.05	9,816.35
Federal Withholding - Taxable Wages	2,253.05	9,816.35

Withholding 3 items

Description	Federal	Work State
Marital Status	Married but withheld at higher Single rate	Married but withheld at higher Single rate
Allowances	0	0
Additional Withholding	0	

Payment Information 1 item

Bank	Account Name	Account Number	Amount in Pay Group Currency	Pay Group Currency
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EXHIBIT 3

Payslip

Angelo Kalaveras: 11/01/2019 (Regular) - Complete [Actions](#)[Previous Payslip](#)[Next Payslip](#)[Return to My Payslips](#)[Print Payslip Image](#)[Print Multiple Payslips](#)

Company Information 1 item

Name	Address	Phone
NCR Corporation	864 Spring St NW Atlanta, GA 30308 United States of America	+1 (800) 225-5627

Payslip Information 1 item

Name	Employee ID	Pay Period Begin	Pay Period End	Check Date	Check Number
Angelo Kalaveras	14200149850	10/19/2019	11/01/2019	11/08/2019	

Current and YTD Totals 2 items

Balance Period	Gross Pay	Pre Tax Deductions	Employee Taxes	Post Tax Deductions	Net Pay
Current	2,206.96	0.00	589.60	0.00	1,617.36
YTD	3,246.96	0.00	796.92	0.00	2,450.04

Earnings 6 items

Description	Dates	Hours	Rate	Amount	YT
Overtime	10/26/2019 - 11/01/2019	2.00	39.00	78.00	78.00
Regular Pay	10/26/2019 - 11/01/2019	4.00	26.00	104.00	104.00
Shift 3 Premium	10/19/2019 - 11/01/2019	24.00	2.00	48.00	48.00
Training Hours	10/19/2019 - 11/01/2019	76.00	26.00	1,976.00	3,016.00
CE Vehicle	10/19/2019 - 11/01/2019	0.00	0.00	27.69	27.69
OT Premium	10/26/2019 - 11/01/2019	0.00	0.00	0.96	0.96
Total:				2,234.65	3,274.65

Employee Taxes 5 items

Description	Amount	YTD
OASDI	138.55	203.03
Medicare	32.40	47.48
Federal Withholding	300.18	399.98
State Tax - CA	96.40	113.96
CA SDI - CASDI	22.07	32.47
Total:	589.60	796.92

Taxable Wages 3 items

Description	Amount	YTD
OASDI - Taxable Wages	2,234.65	3,274.65
Medicare - Taxable Wages	2,234.65	3,274.65
Federal Withholding - Taxable Wages	2,234.65	3,274.65

Withholding 3 items

Description	Federal	Work State
Marital Status	Married but withhold at higher Single rate	Married but withhold at higher Single rate
Allowances	0	0
Additional Withholding	0	

Payment Information 1 item

Bank	Account Name	Account Number	Amount in Pay Group Currency	Pay Group Currency
J.P. Morgan Chase Bank	Chase Bank		1,617.36	USD
Total:			1,617.36	

EXHIBIT 4



NCR Corporation 864 Spring St NW Atlanta, GA 30308 +1 (800) 225-5627

Name	Company	Employee ID	Pay Period Begin	Pay Period End	Check Date	Check Number
Angelo Kalaveras	NCR Corporation	14200149850	01/25/2020	02/07/2020	02/14/2020	

	Gross Pay	Pre Tax Deductions	Employee Taxes	Post Tax Deductions	Net Pay
Current	2,251.00	143.32	546.19	0 00	1,561.49
YTD	9,238.49	573.28	2,277.27	0 00	6,387.94

Earnings						Employee Taxes		
Description	Dates	Hours	Rate	Amount	YTD	Description	Amount	YTD
Regular Pay	01/25/2020 - 02/07/2020	60	26	1,560.00	6,357.00	OASDI	132.64	545.08
Biometric Credit	01/25/2020 - 02/07/2020	0	0	75.00	300.00	Medicare	31.02	127.48
CE Vehicle	01/25/2020 - 02/07/2020	0	0	27.69	110.76	Federal Withholding	276.56	1,157.83
Holiday			0		624.00	State Tax - CA	84.90	360.23
Group Term Life	01/25/2020 - 02/07/2020	0	0	3.90	15.60	CA SDI - CASDI	21.07	86.65
Meal Break Penalty			0		26.00			
Overtime			0		97.50			
OT Premium			0		1.99			
Shift 3 Premium	01/25/2020 - 02/07/2020	48	2	96.00	493.00			
Sick Time	02/01/2020 - 02/07/2020	16	26	416.00	416.00			
Training Hours	01/25/2020 - 01/31/2020	4	26	104.00	923.00			
Earnings				2,282.59	9,364.85	Employee Taxes	546.19	2,277.27

Pre Tax Deductions			Amount	YTD
Description				
Dental Plan			9.16	36.64
Eye Plan			4.75	19.00
Medical			129.41	517.64
Pre Tax Deductions			143.32	573.28

Taxable Wages			Amount	YTD
Description				
OASDI - Taxable Wages			2,139.27	8,791.57
Medicare - Taxable Wages			2,139.27	8,791.57
Federal Withholding - Taxable Wages			2,139.27	8,791.57

	Federal	State
Marital Status	Married but withhold at higher Single rate	Married but withhold at higher Single rate
Allowances	0	0
Additional Withholding	0	

Payment Information				
Bank	Account Name	Account Number	USD Amount	Amount
				1,561.49 USD